



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/Region 5/MB

MAR 28 2013

Ms. Anne O'Dell
Assistant City Manager, City of Norfolk
1101 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Dear Ms. O'Dell:

We are responding to your request submitted by electronic mail dated March 19, 2013. The City of Norfolk provided a status report on eagle management activities undertaken at the Norfolk Botanical Garden and vicinity, which were authorized by U.S. Fish and Wildlife Service (Service) Permit Number MB83462A-2. The City's subpermittee, the U.S. Department of Agriculture, Wildlife Services (USDA-WS), Virginia State Office, provided the status report which you forwarded. You requested that the Service review the activities undertaken and determine if they meet the conditions as described in the permit issued by this office.

In the report provided by Dr. Scott Barras, Wildlife Services State Director, he indicated that two bald eagle nests (one inactive, and one remnant) were removed on October 4, 2012. The permit authorized removal of three active or inactive bald eagle nests by November 9, 2012.

In addition, the permit issued by the Service authorized the city to "disturb bald eagles including removal of partial nests under construction at the described sites to prevent renesting" (see Section 11.D.2 – Conditions and Authorizations). No limits on number of partial nests were prescribed in the Service permit. Dr. Barras reported that partial nests were removed on December 20, 2012, January 11, 2013, February 9, 2013, and March 5, 2013.

We have reviewed our permit file which includes nest take reports and the annual monitoring report submitted by USDA-WS. All reports required as a permit condition for each of the above nest takes have been submitted as required by the Service permit. These reports are required to be submitted within ten days of nest removal. In addition, the USDA-WS has submitted the required annual monitoring report.

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In addition, the City of Norfolk has asked for our views on the recommended activities provided by the City's subpermittee, USDA-WS. We have listed the recommendations below with our response.

1. Continue close monitoring and dispersal of eagles at the Garden and Airport and the removal of partial nests under construction.

Service response: Continued removal of partial nests is an authorized activity allowed until the expiration of the permit. The permit is also conditional on the recommended monitoring occurring. Thus, the Service supports the recommendation as long as activities comply with permit conditions.

2. Amend the federal permit to allow removal of 2 (additional) active or inactive nests between now and August 31. Although the eagles to date have chosen sites near the original nest trees, the available nesting sites are many and widespread, and location of new nesting attempts following the emergence of leaves in early spring may be difficult. This modification will allow for removal of any future nests which are completed prior to detection.

Service response: The Service will evaluate any permit amendment request when it is received in this office. Our review of such a request will be conducted according to our permitting regulations (see 50 CFR Part 22) and our general permitting regulations (see 50 CFR Part 13).

3. After the completion of this year's permitted field activities, the wildlife management agencies will analyze the results of the program and meet with the City and Airport to make recommendations regarding renewal of the permit for 2013-2014.

Service response: The Service supports this recommendation. Due to travel restrictions, we may be unable to attend this meeting in person but will do our best to participate in a conference call.

4. The wildlife management agencies will continue to update the Frequently Asked Questions (FAQ) document to address other management alternatives considered, including nest relocation.

Service response: The Service supports this recommendation. In addition, we wanted to further clarify that the Service, the Virginia Department of Game and Inland Fisheries, and the USDA-WS, did consider nest relocation before sending out the February 3, 2012, letter to the City. Federal regulations (50 CFR 22.27 (a)(2)) allow for nest relocation as follows: "where practicable and biologically warranted, the permit may require a nest to be relocated, or a substitute nest provided, in a suitable site within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation

would create a threat to safety. However, we may issue permits to remove nests that we determine cannot or should not be relocated."

After considering public safety, safety of the eagles, and what was practicable and biologically warranted, the agencies determined that nesting eagles present on the Botanical Garden property were too close to the airport for safety of the public and safety of the eagles. Retaining a nesting territory centered on Lake Whitehurst would do little to alleviate the hazard associated with the foraging behavior and daily activity of breeding eagles near the airport. Given the size of the local eagle population and the presence of suitable nesting habitat within a larger landscape and regional context, relocation of the nest was not needed to provide viable nesting options to ensure stability of local breeding populations.

If the City has any further questions about permit conditions, please contact Sarah Nystrom at 413-253-8592.

Sincerely,

A handwritten signature in cursive script that reads "Sherry Morgan".

Sherry Morgan
Assistant Regional Director
Migratory Birds

cc: Sarah Nystrom (ES)
Val Slocumb (MB)